

(2008) 06 BOM CK 0019

In the Bombay High Court

Case No : Misc. Civil Application No. 984 of 2007 in Stamp no. 3181 of 2007

Shri Rajendra Arjun Gawas

APPELLANT

Vs

Shri Govind Laxman Dalvi (dec.) through LR's

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2008) 06 BOM CK 0019

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : S.D. Padiyar, for the Appellant;

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard Shri Padiyar, the learned Advocate on behalf of the applicant. The applicant seeks condonation of delay of over two years, 846 days to be precise, in filing Second Appeal, against the judgment/decreed dated 4/05/2005. The applicant has stated that he was suffering from hypertension with survival spondylitis with multiple joint pain for the past two years. In support of the application, the applicant has filed a medical certificate dated 2/07/2007 issued by one Dr. Shyam R. Kankonkar. The application has been filed on 30/11/2007. Shri Padiyar, the learned Counsel on behalf of the applicant states that the applicant was not gaining anything by not filing Second Appeal in time and relying on the case of N. Balakrishnan Vs. M. Krishnamurthy, , the learned Counsel submits that the Court is required to see not the length of the delay, but the explanation offered in support of it. Indeed, the Apex Court in the aforesaid decision has stated that:

Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as

the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation.

2. It is seen that the applicant had obtained the medical certificate on 2/07/2007 and the present application was filed on 30/11/2007. There is no explanation for that delay also. It is not the case of the applicant that because he was suffering from hypertension with cervical spondylitis, he was unable to pursue the ordinary pursuits of life. It was not his case that he was advised any rest on account of his suffering the said ailment, which can be termed to as modern life style diseases, which ordinarily do not prevent a person from pursuing their day-to-day activities. The case appears to be one of gross inaction and negligence on the part of the applicant in not pursuing his remedy in time. Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when law so prescribes and the period cannot be extended on equitable grounds. This is not a fit case to condone the delay. Application is rejected.